

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Jon Rolland Martin,

Petitioner,

v.

Charles L. Ryan, et al.,

Respondents.

No. CV-13-00381-PHX-ROS

**ORDER**

Before the Court are Petitioner Martin's objections to the findings and recommendations ("R & R") of the Magistrate Judge. (Doc. 24). For the following reasons, the R & R will be adopted.

**BACKGROUND**

On November 9, 2007, Jon Rolland Martin ("Martin") was convicted in Pinal County Superior Court for three counts of aggravated assault on a peace officer. For each count, he was sentenced to 15 years in prison, to run consecutively for a total of 45 years. The basis for Martin's conviction was a February 2006 encounter with police at Martin's home. The Pinal County Sheriff's Office ("PCSO") sent a S.W.A.T. team of 10 officers to the home to execute a search warrant. According to the PCSO's incident report, "[a]fter the notification of the pending search warrant," the team attempted to call Martin out of his home. At that point, the report states Martin "opened the door and yelled 'I'm going to shoot the cop who comes through the door'. [sic]." One officer supposedly saw a "pump shot gun" and then heard the sound of a round being engaged into the breach."

1 The state eventually conceded that, in the search of Martin's home that followed, only a  
2 single action, not a pump action, shotgun was found. At trial, defense counsel elicited  
3 testimony from one of the officers that a single action shotgun does not make the sound  
4 made by a pump action shotgun. Martin maintained throughout trial that he was not  
5 aware the persons attempting to enter his home were police officers.

6 Martin appealed the conviction through counsel, arguing: (1) denial of due process  
7 and Sixth Amendment rights by permitting the use of aggravation factors previously  
8 precluded, namely the racking of a pump action shotgun before the jury during the  
9 prosecution's opening statement; (2) error in the exclusion of corroborative testimony by  
10 Martin's sister; and (3) improper vouching by the trial court for a victim/witness's  
11 credibility. Martin ultimately withdrew the third claim, and the Arizona Court of Appeals  
12 rejected the other two. The Arizona Supreme Court denied review.

13 Martin applied through counsel for post-conviction review, arguing: (1) the jury  
14 instructions failed to comport with the indictment; (2) the "racking" of a pump action  
15 shotgun during the prosecution's opening statement constituted improper use of graphic  
16 demonstration; and (3) ineffective assistance of counsel for failure to impeach officer  
17 testimony with a contradictory incident report, failure to call a witness on the lack of  
18 pump shotgun at the house, and failure to call a witness on the callout by police.<sup>1</sup> The  
19 superior court found the first two issues precluded by Martin's failure to raise them on  
20 direct appeal; it also found they lacked merit. The court found counsel made reasonable  
21 tactical decisions and was not ineffective. The court of appeals also denied relief.

22 Martin's second petition purported to be based on newly discovered facts. He  
23 argued ineffective assistance of appellate counsel for failure to raise the later precluded  
24 issues he raised in his first petition on direct appeal. Martin did not know appellate  
25 counsel had been ineffective, he claimed, until the superior court informed him of the  
26 preclusive effect of failing to raise the issues in his first appeal. The superior court denied

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27 <sup>1</sup> Martin also raised two factual matters—whether Martin knew the officers were  
28 police and whether he racked a pump action shotgun—which the court declined to review.

1 the second petition, stating, “[T]he fact that the Court ruled that these matters were  
2 precluded does not establish that they had sufficient merit to be included in the appeal by  
3 appellate counsel. In fact, the Court clearly indicated in the ruling that these arguments  
4 were without merit.” Martin’s third notice of post-conviction relief was untimely and  
5 failed to show newly discovered evidence. The superior court summarily dismissed the  
6 notice. The Arizona Supreme Court denied Martin’s request to present an untimely  
7 petition for review.

8 On February 21, 2013, Martin filed his federal petition for writ of habeas corpus.  
9 Petitioner claims: (1) the trial court erred in excluding corroborative testimony by  
10 Martin’s sister; (2) violation of his Fifth, Sixth, and Fourteenth Amendment rights to due  
11 process and an impartial jury by virtue of the “racking” of the shotgun in front of the jury  
12 and the presentation of officer testimony inconsistent with the PCSO’s incident report;  
13 (3) ineffective assistance of trial counsel as a result of failure to conduct adequate  
14 investigation, provide Petitioner with deposition transcripts or police reports, object to the  
15 shotgun demonstration at trial, object to officers’ remaining in the courtroom during trial,  
16 and impeach officer testimony with the incident report; and (4) ineffective assistance of  
17 appellate counsel. On March 10, 2014, the Magistrate Judge issued a report  
18 recommending denial of the petition. The Magistrate found all but part three of ground  
19 three of the petition procedurally barred without cause and prejudice. The Magistrate  
20 evaluated part three, ground three (ineffective assistance of trial counsel for failure to  
21 object to shotgun demonstration at trial) on the merits and found counsel’s decision not to  
22 object at trial reasonable because the demonstration “emphasized the primary hole in the  
23 prosecution’s case, namely the absence of a pump action shotgun.”

## 24 ANALYSIS

### 25 I. Standard of Review for Report and Recommendation

26 A district judge “may accept, reject, or modify, in whole or in part, the findings or  
27 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). Where any party  
28 has filed timely objections to the magistrate judge’s report and recommendations (“R &  
R”), the district court’s review of the part objected to is to be *de novo*. *Id.* See also

1 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). “Neither the  
 2 Constitution nor the statute requires a district judge to review, de novo, findings and  
 3 recommendations that the parties themselves accept as correct.” *Mortensen v. BAC Home*  
 4 *Loans Servicing, LP*, 1:10-CV-00298-EJL, 2013 WL 943085 (D. Idaho Mar. 8, 2013).  
 5 Rather, a district judge must only review “findings and recommendations *de novo* if  
 6 *objection is made*.” *Reyna-Tapia*, 328 F.3d at 1122; *see also* 28 U.S.C. § 636(b)(1)  
 7 (“[T]he court shall make a de novo determination of those portions of the [R & R] to  
 8 which objection is made.”). Although the Ninth Circuit has not yet ruled on the matter,  
 9 other circuits and district courts within the Ninth Circuit have held when a petitioner  
 10 raises a general objection to an R & R, rather than specific objections, the Court is  
 11 relieved of any obligation to review it. *See, e.g., Warling v. Ryan*, 2013 WL 5276367, at  
 12 \*2 (D. Ariz. Sept. 19, 2013) (“[A] general objection ‘has the same effect as would a  
 13 failure to object.’”); *Gutierrez v. Flannican*, CV-05-2981PHXDGCDD, 2006 WL  
 14 2816599 (D. Ariz. Sept. 29, 2006) (citing *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984);  
 15 *Lockert v. Faulkner*, 843 F.2d 1015, 1019 (7th Cir. 1988); *Howard v. Sec. of Health and*  
 16 *Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991); *United States v. One Parcel of Real*  
 17 *Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996)).

## 18 **II. Petitioner Fails to Make Specific Objections**

19 The R & R is considerably detailed and meticulously sorts each of Petitioner’s  
 20 claims, applying the myriad procedural rules of habeas corpus to the history of  
 21 Petitioner’s case. Petitioner’s most specific objection is that the R & R contradicts an  
 22 earlier magistrate order. However, the statements to which Petitioner points—one  
 23 concerning the Magistrate’s tentative finding of exhaustion and another explaining the  
 24 Magistrate’s decision not to investigate missing pages from the incident report—are  
 25 unrelated. The remainder of Petitioner’s objection consists of criticisms of the justice  
 26 system and prosecutors’ conduct, generally. He does not object to the Magistrate’s  
 27 findings of procedural bar or reasonableness of counsel. This is insufficient to trigger *de*  
 28 *novo* review of those findings. Therefore, the R & R will be adopted in full.


1 Accordingly,

2 **IT IS ORDERED** the Magistrate Judge's report and recommendation (Doc. 23) is  
3 **ADOPTED**. Petitioner's objections (Doc. 24) are **OVERRULED**, and the petition (Doc.  
4 1) is **DENIED**.

5 **IT IS FURTHER ORDERED** a Certificate of Appealability is **DENIED** because  
6 Petitioner has not made a substantial showing of the denial of a constitutional right.

7 Dated this 23rd day of October, 2014.

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Honorable Roslyn O. Silver  
Senior United States District Judge